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ABSTRACT

National surveys reveal that citizens of all age groups, from school age to adult, are ignorant about the law and its practical use in daily life. The advocate counseling model is an integrative approach combining the elements of legal research and therapeutic counseling in order to teach and guide individuals or groups with institutional problems to act as advocate for themselves affirmatively and assertively. Teaching clients to gain maximum control over their lives is the central goal of the model which utilizes certain aspects of therapeutic counseling, including empathy, problem-solving techniques, decision-making strategies, and provision of an atmosphere of affirmative and assertive actions. As clients develop their self-esteem through this process, they are taught the legal research aspect, i.e., the organization of facts and the documentation of incidents with institutions and their personnel who have caused them grief or injury. Assumptions from therapeutic and advocate counseling models increase, university enrollments decrease, and university principles, which are of use as higher education costs increase, university enrollments decrease, and university student legal services face the problem of meeting student legal problems with less monies and resources. (Author/HLM)

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A Self-Help Alternative in Student Legal Services Clinics*

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The theme of this morning's session is, "The SElf-Help Alternative: Is competent service the only thing we owe our clients?" Relative to this theme, I would like to address three areas that are particularly important to the advocate counseling workshop which follows this plenary session. First, I want to present some data and information about the level of legal literacy among the public and the quality of legal services offered in this nation. Second, I wish to address a crucial element of our advocate counseling model, the importance of providing therapeutic counseling to those facing legal/institutional problems. Third, I will discuss some of the differences and ramifications of representative forms of help and self-representative forms of help. Hopefully, the examination of these three areas, coupled with the Brophy paper, will provide you with a clearer perspective of the advocate counseling model, a proposed self-help alternative for student legal services clinics.

I. Legal Literacy & Legal Services. One of the more recent study groups chaired by Steven Y. Winnick of the U.S. Office of Education provides data that citizens of all age groups, from school age to adult, are ignorant about the law and its practical use in one's daily life. The Final Report of the Study Group on Law-Related Education [1] reported that only about ten

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percent of the nation:s elementary and secondary school students are receiving any meaningful law-related education. "In most school systems, law-related education is not a basic part of the regular school curriculum. Many educators are not aware of law-related education programs and the potential value of these programs, and some think of the law as too complex an area to be taught in the schools."[2] The Study Group cited several studies to demonstrate its concern about public legal literacy. The second national assessment of citizenship and social studies administered by the National Assessment of Educational Progrsss showed scores in the following categories for 13 and 17 year olds have been declining over the past several years: constitutional rights, respect for others, understanding the need for the law, basic concepts of democracy, structure and function of government, and political participation. The Adult Functional Competency Study conducted by the University of Texas at Austin indicated that a significantly high number of adults had extremely low competency levels in the areas of government and the law, both knowledge-wise and skill-wise. Two years ago, The Washington Post[3] reported a national survey of public attitudes towards the court system conducted by Yankelovich, Skelly, and White, Inc. The survey indicated that only one out of four persons expressed any knowledge of the court system and almost two of five persons believe a person is guilty until proven innocent. As these above reports indicate, ignorance of the law is blatant throughout society.

Add to the above information, the address by President Carter to the Los Angeles Bar Association on May 4, 1978, the summary of which is reported in The New York Times.[4] President Carter stated that this nation has the heaviest concentration of lawyers on the face of this earth. There is one lawyer for every 500 Americans. This is three times more per capita than England and 21 times more than Japan. There is more litigation than ever before in our history, but Carter questions whether there is more justice.

With 90 percent of the lawyers serving ten percent of the nation's people, Carter contends that this nation is overlawyered and underserved.

Given an overlawyered society and an underserved and legally ignorant public, it is no wonder that the statements made in one of Shakespeare's plays are still relevant for today's society. In King Henry VI, Second Part, Act IV, Seene II, Dick the butcher of Ashford said:

"The first thing we do, let's kill all the lawyers."[5]

To which Jack Cade, the leader of the commoner's rebellion replied:

> "Nay, that I mean to do. Is not this a lamentable thing,
> that of the skin of an innocent lamb should be made parchment?
> that parchment being scribbled o'er, should undo man?
> Some say the bee stings: but I say, 'tis the bee's wax:
> for I did but seal once to a thing, and I was never mine
> own man since."[6]

Cade's rebellion in Shakespeare's time was between the educated, those who had access and knowledge about the law and the common people who were affected by the law. It is true today, as in Shakespeare's time, that the law affects everyone, but there is a tremendous gap, as the reports indicate, between those who are knowledgable about the law and the average citizen.

II. The Role of Therapeutic Counseling in Legal/Institutional Problems.! What I will be discussing here is the importance of providing therapeutic counseling to those undergoing legal/institutional difficulties. This is the crux of the advocate counseling model. This model is an integrative approach which combines the elements of legal research and therapeutic counseling in order to teach and guide individuals and groups with institutional problems to advocate for themselves in an assertive and affirmative manner. Another way of stating this is: the model is an educational self-help approach which teaches legal research skills to clients and offers counseling and guidance to clients whey they are confronted with the facts and the feelings related to the institutional difficulty.

Therapeutic counseling and psychotherapy have contributed much to human services professions such as, psychology, education, and social work. There are much data and evidence to demonstrate some very effective tools for clients undergoing personal and interpersonal problems. Studies by two particular schools of therapy, the Carl Rogers or facilitative counseling school and the behavior modification/behavior therapy school have contributed immensely to the advancement of the field in the last 30 to 40 years.

It is my contention that therapeutic counseling can play a very important role in aiding those individuals facing legal/institutional problems. The application of this specific approach will also change the perspective of the current legal helper. Here's why. The field of counseling, regardless of the various schools of therapy, all tend to help the client in need to self-enhance, to self-actualize, or to gain maximal control over the environment. The counselor's or therapist's role is to provide the client with a warm, empathic, and accepting atmosphere with which to explore, clarify, and generate alternatives to solving the problem. In addition, the counselor may provide certain strategies which would help the client attain the goal or implement the strategy. In providing these skills and leaving many of the choices and decision making up to the client, it is hoped that the client will feel more in control of the situation, feel more self-reliant, independent and have a higher estimation of him/herself. It is this concept, the teaching of clients to gain maximal control over their own lives, which is the central goal of the advocate counseling model.[7] An because of this goal, it differs from representative approaches which I will discuss later in this paper. Let me mention some areas which counseling can be of help in the legal/institution problem context.

1. It is important to establish a good relationship between counselor and client, between the paralegal helper and the client, or between helper and

helpee. A distressed client with a legal/institutional problem is more able to explain the facts if the counselor were warm, empathic and provided an accepting atmosphere to also explore and clarify the client's feelings of anger, frustration, uncertainly, and/or anxiety. The advocate counseling model attempts to provide this needed aspect. There are those in the legal profession who recognize the need for effective counseling skills. For example, Thomas Shaffer's book, Legal Interviewing and Counseling[8] is an attempt to sen itize those in the legal profession to client facts and feelings.

2. It is important to help clients gain maximal control over the problem situation and to problem solve for themselves. Many individuals with problems tend to initially non-assertive and are dependent upon the counselor. There is a strong temptation for the counselor to suggest alternatives and to solve the problem for the client. If this occurs, then the counselor will feel good about problem solving for another individual, not the client feeling good about dealing with the problem him/herself.

3. In addition, counseling can help a client in the following areas:

   a. Focus on problem exploration, clarification, generation of alternatives and consequences;

   b. Facilitate decision making of action steps and consolidation of choice;

   c. Provide client with roleplaying, role rehearsal, and assertive training techniques in order to actualize an action step;

   d. Help client understand and deal with changing thoughts, feelings, and values; and

   e. Help client to deal with his/her own feelings of anger, frustration, uncertainty, anxiety,etc.

4. In addition, counseling can provide an atmosphere with which to develop an affirmative but assertive format. This means teaching clients to state what they are for, rather than against. As clients explore and clarify their feelings of anger and frustration, they are more able to become positive in their approach to problem resolution. Without this experience, clients tend to translate their unresolved anger/frustration into a verbal negative, confrontative or aggressive stance. In our experience, teaching clients to adopt an affirmative but assertive stance is one of the most difficult steps in the process. This posture assumes that the client is pro-institution, positive but firm in his/her requests, and adopts the least-escalative approach possible.

The term, "assertive," must also be clarified in the context of this model. There is a current popular movement in this nation called, "assertive training," and this is exemplified by Alberti & Emmons' Your Perfect Right. This practical approach to interpersonal relations helps clients to distinguish between non-assertive, assertive and aggressive behaviors. In addition, clients are taught to learn how to 1) refuse requests (how to say"no" without feeling guilty), 2) make simple requests, and 3) request a change in behavior. Advocate counseling utilizes these techniques in legal/institutional problems. This means educating the client with regard to interpersonal difficulties which may arise, in addition to the legal and political incidents which may occur. A woman who is underpaid 25¢ an hour less for the same work as her male counterparts, in redressing her grievance, may encounter legal, political and interpersonnl issues. There will be pressures and expectations from peers who are for her, as well as from peers who do not want her to "rock the boat." Supervisors may resent her and retaliate. Assertive training in the context of political and legal options is what advocate counsliing can provide. She can learn to be positive, pro-institution, and low-escalative in behavior, rather than being pressured by supervisors and/or peers to be negative, confrontative, or defensive (i.e., perceived as a "whistle blower").

When the above features are applied to the advocate counseling process, the results can be dramatic and highly beneficial to the client's self-esteem. Clients are encouraged and counseled to be in control and assert maximal over problem situation.

In addition, clients are taught the other part of the advocate counseling process, the legal research aspect.[9] More specifically, client are taught to organize facts and to document incidents with institutions and their personnel who have caused them grief or injury. Guidelines are provided as to how to access accurate and up-to-date primary source information, the generation of alternatives and legal consequences, and the implementation of assertive but affirmative procedures to resolve the problem. This means instructing and counseling the client to redress the institutional problem in the least escalative, non-adversarial manner as possible. This also means, trying to change the client's attitudes from being negative and anti-institution to being positive and pro-institution. Clients undergoing advocate counseling are encouraged to interact with the institution on the written level in order to provide them with a greater control of the situation. Too often, clients, in their impatience to resolve the "urgent" problems, become excessively confrontative and distort facts when interacting orally with institutional personnel. The results, many times, are disastrous for the clients. There is much more to the advocate counseling model than what I have described, but will be presented in the morning workshop. In summary, counseling is necessary when working with individuals with legal/institutional problems, since many of the behaviors to be performed by the client will be new and the client will be anxious, uncertain and many times, frustrated.

III. Representative & Self-Help Approaches. Given what I have stated in the previous section, it is understandable that I advocate a re-examination of those efforts in our society which purport to represent others in some capacity and those efforts which teach others to represent themselves. Specifically, there needs to be a re-evaluation of the conditions under which representative forms of help and self-representative forms of help are utilized. There is a general tendency in this society towards representative types of help as opposed to participatory types of help. Credentialed experts are numerous in this society: they provide services on behalf of their clients because clients lack the expertise, the information, or the time. However, in an era where the public is inundated with so many credentialed experts to problem solve for its citizenry, and where the quality of services and results are tenuous, re-examination, if not other alternatives, should be commonplace. In the area of advocacy, one finds a great majority of approaches focusing on someone performing some service on behalf of another individual or group. Ralph Nader's consumer advocacy efforts is but one example. Note though, there is little attention or effort paid to self-help or self-advocacy approaches. In the area of law, the legal aid movement and the legal services or public interest law movement in the last 100 years have been attempts to represent the unrepresented or the underrepresented.[10] The Center for Public Representation (in Madison, Wisconsin) consists totally of attorneys to advocate for the public in such issues as environmental protection, women's rights, the disabled, and communications policy.

In contrast, the assumptions and value system from therapeutic counseling and from advocate counseling tend to favor the self-help, self-advocacy, and self-enhancement principles. In the legal area, there exists some self-help approaches. The model to be described today by Susan Williams of the University

of Maine at Orono is an example of the self-help approach. The advocate counseling model to be presented by Michael C. Brophy and myself is yet another. On the national level, the Law-Related Education Act of 1978 and its subsequent programmatic efforts is an attempt by Congress to close the gap between those having access and knowledge of the law and the average citizen. The concept of law-related education is basically, "education to equip non-lawyers with knowledge and skills pertaining to the law, the legal process, and the legal system and the fundamental principles and values on which these are based."[11]

The problem of entertaining representative or self-help legal approaches becomes more acute in light of the current situation in higher education. As educational costs increase and as college and university enrollments continue to decrease, university student legal services clinics will face the problem of meeting student legal problems with less monies and less resources. On a sheer economical ground, representative legal approaches tend to be more costly than self-help methods. Having attorneys advise and/or litigate cases for students is costly. Having paralegal personnel deal with much of the less complex student legal problems is one way of cutting costs. Referring students to low-cost attorneys, social service agencies, etc., for problem solving may be less costly to the university legal clinics, but still costly to the student.

Let me attempt to articulate some of my thoughts regarding the tradeoffs of utilizing representative legal approaches. First, these efforts tend to promote a dependency upon the credentialed individual. The client or student learns to go back to that individual who successfully resolves the problem for him/her. Instead of saying, "I did it!", the client is reinforced for saying, "My lawyer did it for me!" Rarely does this process promote knowledge

and skills about the law, and generally the legal awareness level is limited and the problem solving behaviors are not replicable. Second, representative efforts may not decrease the level of ignorance of the public about the law and its practicality. Students are indeed not motivated to learn the law and practicality when someone else problem solves for them. Learning theorists in education and psychology have for years stated that active and direct participation in a problem solving task tends to promote greater learning and retention than passive and indirect involvement. If direct participation by clients is crucial, then shouldn't there be more efforts in this direction, even to the point of encouraging and teaching clients to problem solve for themselves? Third, representative approaches are easier to perform than teaching self-help alternatives. It is more difficult sometimes to convince clients that they have the capacity within themselves to problem solve, even if counseling and guidance and legal research help were provided. So, the temptation to resolve difficulties for others is great, in light of the alternatives.

Let me end with these statements. The self-help approach to student legal problems is an attempt to close the gap between those who have access and knowledge of the law and the public, those who are ignorant about the law. According to Milwaukee attorney, Curry First,[12] many legal problems involving factual disputes including, but not limited to, unemployment, immigration, consumers, senior citizens, handicapped, housing, employment and employment discrimination can be handled initially and sometimes successfully by non-lawyer approaches. Problems stemming from criminal charges, civil issues pending in court, and those in which the court system requires the presence of an attorney should be referred to an attorney. The advocate counseling

model is but one of very few efforts in the self-help vein. The model is currently being taught as a beginning graduate counseling course in the Department of Educational Psychology called, Awareness: counseling, poverty & urban cultures. This course coupled with another course called, Essentials of counseling, provides those interested in our form of self-help with a dynamite combination.

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